

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF**

75-4182

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JACQUES PIERRE,

Petitioner,

- v -

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

PETITIONER'S BRIEF

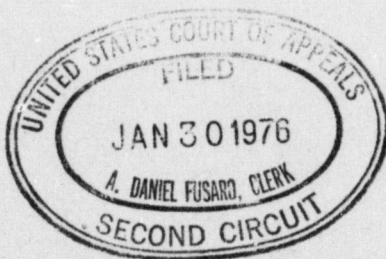
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Docket No. 75-4182

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JANUARY, 1976

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PETITIONER'S BRIEF

STATEMENT OF THE ISSUE

Whether the Board of Immigration Appeals properly applied to the facts of the case at bar the standards governing the withholding of deportation pursuant to Sec. 243 (h), as amended, of the Immigration and Nationality Act of 1952, 79 Stat. 918.

STATEMENT OF THE CASE

Petitioner Jacques Pierre is an alien and citizen of Haiti. He entered the United States on or

about October 18, 1969 as a non-immigrant. Mr. Jacques Pierre overstayed his period of admission and on June 6, 1973, an Order to Show Cause was issued (R. 35a) charging him with overstay pursuant to Sec. 241 (a) (2). At his hearing before an Immigration Judge he admitted that he was deportable (R. 9a) but made an application for withholding of deportation pursuant to Sec. 243 (h) as amended, of the Immigration and Nationality Act of 1952, 79 Stat. 918. The Immigration Judge heard Mr. Pierre's testimony concerning his fear of being persecuted because he was a supporter of Dejoie, a candidate who opposed Duvalier in 1957. Mr. Pierre stated that his employer in Haiti, Mr. Cesar, who was also a follower of Dejoie had been arrested and has been beaten and tortured to death, and all those around him could have been arrested also if they were found by the group of Duvalier. The Immigration Judge at the hearing stated, " I am familiar enough with the situation to take judicial notice of the fact that there was hostility between the two factions, the Dejoie's and the Duvalier's, back at the time that Duvalier was running for office, and in fact some of the Dejoie's followers were killed by the Duvalier party." (R. 23a-24a).

The Immigration Judge, in a decision dated November 25, 1974 (R. 4a - 7a) rejected the 243(h) application, and ordered respondent's deportation in the event he failed to depart voluntarily. On administrative appeal, the Board of Immigration Appeals affirmed (R. 1a - 3a). This petition for review followed.

ARGUMENT

POINT I. Present conditions in Haiti.

The National Geographic of January 1, 1976 (Vol. 149, No. 1) has this to say about present conditions in Haiti; (The National Geographic is one of America's most respected publications, with a circulation reaching 7,000,000 copies).

"We were alone," my informant said in a whisper. "Cut off from the rest of the world in the middle of the 20th century. Never knowing when the police would strike. That was life under Papa Doc."

It was night and we sat out of doors, apart from the others, apart from the music and the lights. I could not see the expression of his black face, but I knew it was watchful. I had learned that it was still risky to speak honestly about Francois Duvalier, even though he had been dead for three years.

A soft-spoken physician who had studied in the United States, Duvalier had come to power by legitimately winning an election as President by an overwhelming majority in 1957. His aims: to shift power from a mulatto minority to a black majority and to improve self-sufficiency. But in consolidating his power, he is alleged to have resorted to abduction, imprisonment, torture, even murder.

Duvalier's brutal tontons macoute - "bogeymen"- in their blue serge suits, open-necked shirts, dark glasses, and side arms terrorized Duvalier supporters as well as opponents, since his policy was to trust no one.

During most of Duvalier years, the late 1950's through the 1960's, Haiti had virtually no economic growth. One source of help, U.S. aid, was reduced for several years in protest against Duvalier's policies.

My nighttime confidant had once been a friend and supporter of the President-for-life, and he told me these things sadly.

"Worst of all," he concluded, "the regime made fear a pervading part of Haitian life."

That stranglehold of fear during Papa Doc's day was powerfully strengthened by the President's uncanny resemblance - perhaps cultivated - to popular renderings of Baron Samedi, the awesome keeper of the tombs in the folk religion, voodoo. (Emphasis supplied)

This is not quite what the Immigration Judge found, not on the record but on the basis of conjecture. Obviously the conditions of life in Haiti did not develop overnight, they are the result of years of

oppression by a ruthless dictatorship. (O. November 17, 1974 Pierre testified before the Immigration Judge (R. 24a) that he feared for his life.) Now, in January, 1976, the National Geographic states: at 77

"Worst of all," he concluded, "the regime made fear a pervading part of Haitian life".

Pierre did not play with words when he testified. He feared being subject to the same punishment and treatment as that meted out to the supporters of Dejoie: imprisonment without charges being preferred, without a trial and without conviction.

POINT II. The "findings" of the Immigration Judge are not supported by substantial evidence.

Section 106 (a) (4) of the Act provides, in pertinent part:

"the Attorney General's findings of fact if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive".

Here the Attorney General has delegated his functions to make findings of fact to the Immigration Judge who, in turn, has not made the effort to comply with the statutory standard. Apparently, in this deportation proceeding where the burden of proof is upon

the Government, there has been no proof of the actual conditions, of life in Haiti, as described by the National Geographic.

The order of the Board of Immigration Appeals which affirmed the order of the Immigration Judge, should be vacated and the cause remanded to the Immigration Judge for a hearing as to the actual conditions of life in Haiti, cf. I.N.S. v. STANISIC, 395 U.S. 62, at 79, 80. Sovich v Esperdy, 319 F.2d 21 (2nd Circ., 1963), Kovac v. I.N.S. 407 F.2d 102 (9th Circ., 1969). In such a proceeding, Pierre should be permitted to introduce into evidence the National Geographic account of life in Haiti and, if need be, to call as eye witnesses the writers of that article.

POINT III. There is no evidentiary value in the State Department letter of July 11, 1974.

Despite the decisions in Asravi v. I.N.S., 400 F.2d 675 (9th Circ., 1968) and Khalil v. I.N.S. 452 F.2d 1276 (9th Circ., 1972), the I.N.S. has relied on the State Department's answer (R. 31a-32a) to its inquiry in denying Pierre his 243 (h) claim, R. 30a and in resisting his 243 (h) application, R. 29a which he made to the Immigration Judge.

The decision of the Immigration Judge expressly relied on the State Department letter (R 31a - 32a) and the Board of Immigration Appeals affirmed the decision. The letter should be stricken, Kasravi, Khalil, supra.

CONCLUSION

For the foregoing reasons, the Order of the Board of Immigration Appeals, affirming the decision of the Immigration Judge on Pierre's 243(h) application should be vacated and the cause remanded for further proceedings before the Immigration Judge.

Respectfully submitted

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January, 1976

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STATUTES CITED AND INVOLVED

Immigration and Nationality Act of 1952, as amended

Section 106 (a) :

Determination upon administrative record

"****(4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive."

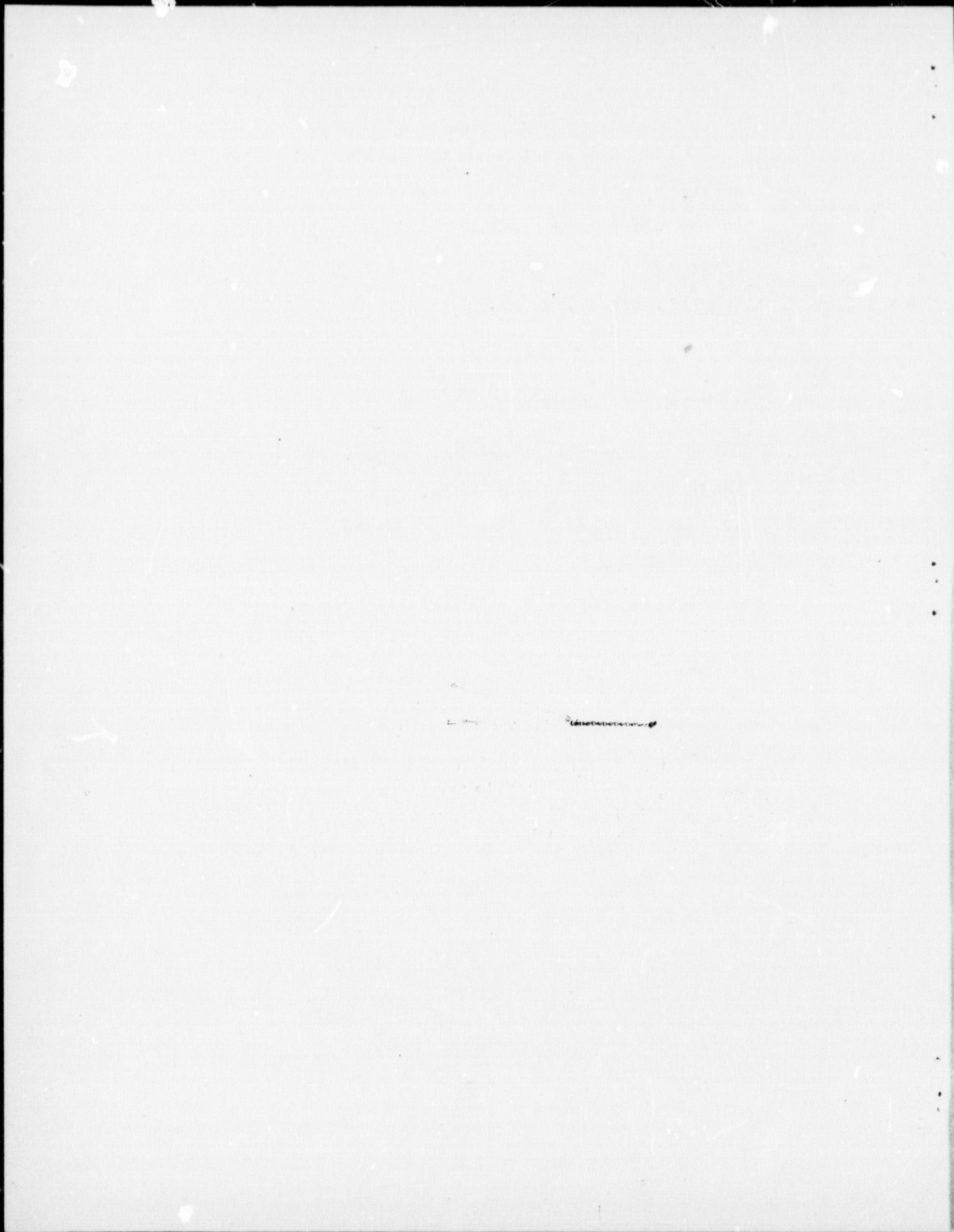
Section 241 - Deportable aliens - General classes

(a) Any alien in the United States (including an alien crewmen) shall, upon the order of the Attorney General, be deported who *****

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States.

Section 243 (h) - Withholding of deportation

(h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason.



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Thomas J Cahill
UNITED STATES ATTORNEY

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